

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Kico Lin, Executive Trustee of The
Win Trust dated August 23, 1997;
Mike Lin, Executive Secretary
Trustee of The Win Trust dated
August 23, 1997;
Liquor Bin Corp., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Kico Lin, Executive Trustee of The Win Trust dated August 23, 1997; Mike Lin, Executive Secretary Trustee of The Win Trust dated August 23, 1997; Liquor Bin Corp., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially

1 equipped van.

2 2. Defendants Kico Lin and Mike Lin, Executive Trustee of The Win Trust
3 dated August 23, 1997, owned the real property located at or about 4645
4 Cherry Ave, San Jose, California, in July 2019 and July 2020.

5 3. Defendants Kico Lin and Mike Lin, Executive Trustee of The Win Trust
6 dated August 23, 1997, owns the real property located at or about 4645
7 Cherry Ave, San Jose, California, currently.

8 4. Defendant Liquor Bin Corp. owned Liquor Bin located at or about 4645
9 Cherry Ave, San Jose, California, in July 2019 and July 2020.

10 5. Defendant Liquor Bin Corp. owns Liquor Bin (“Store”) located at or
11 about 4645 Cherry Ave, San Jose, California, currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein is
17 responsible in some capacity for the events herein alleged, or is a necessary
18 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
19 the true names, capacities, connections, and responsibilities of the Defendants
20 are ascertained.

21
22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to 28
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California’s Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Store in July 2019 (twice) and July 2020 with the
8 intention to avail himself of its goods motivated in part to determine if the
9 defendants comply with the disability access laws.

10 11. The Store is a facility open to the public, a place of public
11 accommodation, and a business establishment.

12 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
13 to provide wheelchair accessible parking in conformance with the ADA
14 Standards as it relates to wheelchair users like the plaintiff.

15 13. The Store provides parking to its customers but fails to provide
16 wheelchair accessible parking.

17 14. The problem that plaintiff encountered is that the parking stall and
18 access aisle marked and reserved for persons with disabilities had slopes that
19 exceeded 2.1%.

20 15. Plaintiff believes that there are other features of the parking that likely
21 fail to comply with the ADA Standards and seeks to have fully compliant
22 parking available for wheelchair users.

23 16. On information and belief the defendants currently fail to provide
24 wheelchair accessible parking.

25 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
26 to provide wheelchair accessible sales counters in conformance with the ADA
27 Standards as it relates to wheelchair users like the plaintiff.

28 18. The Store provides sales counters to its customers but fails to provide

1 wheelchair accessible sales counters.

2 19. A problem that plaintiff encountered was that the sales counter was too
3 high and there was no lowered portion of the sales counter suitable for
4 wheelchair users.

5 20. Plaintiff believes that there are other features of the sales counters that
6 likely fail to comply with the ADA Standards and seeks to have fully compliant
7 sales counters available for wheelchair users.

8 21. On information and belief the defendants currently fail to provide
9 wheelchair accessible sales counters.

10 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to
11 provide wheelchair accessible door hardware in conformance with the ADA
12 Standards as it relates to wheelchair users like the plaintiff.

13 23. The Store provides door hardware to its customers but fails to provide
14 wheelchair accessible door hardware.

15 24. One problem that plaintiff encountered is that the entrance door
16 hardware had a pull bar style handle that required tight grasping to operate.

17 25. Plaintiff believes that there are other features of the door hardware that
18 likely fail to comply with the ADA Standards and seeks to have fully compliant
19 door hardware available for wheelchair users.

20 26. On information and belief the defendants currently fail to provide
21 wheelchair accessible door hardware.

22 27. These barriers relate to and impact the plaintiff's disability. Plaintiff
23 personally encountered these barriers.

24 28. As a wheelchair user, the plaintiff benefits from and is entitled to use
25 wheelchair accessible facilities. By failing to provide accessible facilities, the
26 defendants denied the plaintiff full and equal access.

27 29. The failure to provide accessible facilities created difficulty and
28 discomfort for the Plaintiff.

1 30. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 31. The barriers identified above are easily removed without much
5 difficulty or expense. They are the types of barriers identified by the
6 Department of Justice as presumably readily achievable to remove and, in fact,
7 these barriers are readily achievable to remove. Moreover, there are numerous
8 alternative accommodations that could be made to provide a greater level of
9 access if complete removal were not achievable.

10 32. Plaintiff will return to the Store to avail himself of its goods and to
11 determine compliance with the disability access laws once it is represented to
12 him that the Store and its facilities are accessible. Plaintiff is currently deterred
13 from doing so because of his knowledge of the existing barriers and his
14 uncertainty about the existence of yet other barriers on the site. If the barriers
15 are not removed, the plaintiff will face unlawful and discriminatory barriers
16 again.

17 33. Given the obvious and blatant nature of the barriers and violations
18 alleged herein, the plaintiff alleges, on information and belief, that there are
19 other violations and barriers on the site that relate to his disability. Plaintiff will
20 amend the complaint, to provide proper notice regarding the scope of this
21 lawsuit, once he conducts a site inspection. However, please be on notice that
22 the plaintiff seeks to have all barriers related to his disability remedied. See
23 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
24 encounters one barrier at a site, he can sue to have all barriers that relate to his
25 disability removed regardless of whether he personally encountered them).

26
27 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
28 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all

1 Defendants.) (42 U.S.C. section 12101, et seq.)

2 34. Plaintiff re-pleads and incorporates by reference, as if fully set forth
3 again herein, the allegations contained in all prior paragraphs of this
4 complaint.

5 35. Under the ADA, it is an act of discrimination to fail to ensure that the
6 privileges, advantages, accommodations, facilities, goods and services of any
7 place of public accommodation is offered on a full and equal basis by anyone
8 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
9 § 12182(a). Discrimination is defined, inter alia, as follows:

- 10 a. A failure to make reasonable modifications in policies, practices,
11 or procedures, when such modifications are necessary to afford
12 goods, services, facilities, privileges, advantages, or
13 accommodations to individuals with disabilities, unless the
14 accommodation would work a fundamental alteration of those
15 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 16 b. A failure to remove architectural barriers where such removal is
17 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
18 defined by reference to the ADA Standards.
- 19 c. A failure to make alterations in such a manner that, to the
20 maximum extent feasible, the altered portions of the facility are
21 readily accessible to and usable by individuals with disabilities,
22 including individuals who use wheelchairs or to ensure that, to the
23 maximum extent feasible, the path of travel to the altered area and
24 the bathrooms, telephones, and drinking fountains serving the
25 altered area, are readily accessible to and usable by individuals
26 with disabilities. 42 U.S.C. § 12183(a)(2).

27 36. When a business provides parking for its customers, it must provide
28 accessible parking.

1 37. Here, accessible parking has not been provided in conformance with the
2 ADA Standards.

3 38. When a business provides facilities such as sales or transaction counters,
4 it must provide accessible sales or transaction counters.

5 39. Here, accessible sales or transaction counters have not been provided in
6 conformance with the ADA Standards.

7 40. When a business provides facilities such as door hardware, it must
8 provide accessible door hardware.

9 41. Here, accessible door hardware has not been provided in conformance
10 with the ADA Standards.

11 42. The Safe Harbor provisions of the 2010 Standards are not applicable
12 here because the conditions challenged in this lawsuit do not comply with the
13 1991 Standards.

14 43. A public accommodation must maintain in operable working condition
15 those features of its facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 44. Here, the failure to ensure that the accessible facilities were available
18 and ready to be used by the plaintiff is a violation of the law.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 45. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 46. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 47. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12 49. Although the plaintiff encountered frustration and difficulty by facing
13 discriminatory barriers, even manifesting itself with minor and fleeting
14 physical symptoms, the plaintiff does not value this very modest physical
15 personal injury greater than the amount of the statutory damages.

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.

26 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
27 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
28

1 Dated: November 12, 2020

CENTER FOR DISABILITY ACCESS

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3 By:



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5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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